No. 417

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, PETITIONER

-vs-

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED.

RESPONDENT'S MOTION AND BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA.

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RESPONDENT'S MOTION AND BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA.

Before considering petitioner's application for writ of certiorari on its merits respondent makes the following:

MOTION

1. That the application for writ of certiorari of petitioner be denied and dismissed for the reason that petitioner did not exhaust its remedies in the Supreme Court of the State of South Dakota; in that it did not move or apply to the Supreme Court of the State of

South Dakota for a re-hearing upon entry of the Order of said Supreme Court dated May 20, 1946, (Transcript of Record pages 21-30) Confirming Judgment of the Circuit Court of the Fifth Judicial Circuit within and for Roberts County, South Dakota, as provided therefore in rule 79, set out at Section 33.0751 of the Judicial Code Section 237, 28 U. S. C. 344; 28 U. S. C. A. Section 344. Market St. Ry. Co. -vs- Railroad Commission of the State of California, 324 U. S. 548; 65 S. Ct. 770; Gorman, City Treasurer of Kansas City, Mo., et al -vs- Washington University, 316 U. S. 98; 62 S. Ct. 962; Department of Banking of the State of Nebraska -vs- Pink, Supt. of Insurance of the State of New York, 317 U. S. 264; 63 S. Ct. 233. Respondent makes the further

MOTION

2. Respondent further moves this Court that the application of the petitioner for writ of certiorari be denied and dismissed for the reason that the petition for said writ is based upon the contention that the indebtedness is a debt due the United States Government and is entitled to preference under the provisions of Section 3466 of the Revised Statutes of the United States. While the transcript shows it to be a claim arising out of an obligation due the "Governor of the Farm Credit Administration". (Transcript of Record pages 5, 6, 7, and 8).

REASON FOR DENYING WRIT

It is the contention of the Respondent that the obligation in controversy on this appeal is not an obligation due or owing the Federal Government in its sovereign capacity. That obligations may be due or owing the United States Government or its instrumenalities which may be of different classes or of different preferences. Those obligations due the United States for the support of the Government or its sovereignty have a preferred classification under Section 3466 of the Revised Statutes, while debts due a governmental agency by reason of some governmental business venture are not entitled to preference under this Section.

That where a claim arises upon a debt due the United States Government by reason of a tax or license which has been levied or imposed by the Federal Government in support of its sovereignty and for the purpose of carrying on the necessary functions of the Government, such an obligation falls under the provisions of said Section 3466.

On the other hand, if the obligation or claim arises from some business venture in which the Federal Government has engaged, or if it arises through some governmental agency established by the National Government to operate some set-up or business which is not strictly or necessarily a governmental function, then it does not come under the provisions of said Section 3466, and such claim is not entitled to any pre-

ferred classification as a debt due the United States. This has been the established law of our Government from its very early history dating back to the case of the United States -vs- Planter's Bank of Georgia, 9 Wheat. 904; 6 Fed. 244. The language of Chief Justice Marshall in this opinion seems so pertinent to this controversy that we quote from it here; "It is, we think, a sound principle, that when a sovereign becomes a partner in any trading company, it divests itself so far as concerns the transaction of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the government its privileges and perogatives, it descends to a level with those with whom it associates itself and takes the character which belongs to its associates and the business which is to be transacted."

In this case now before the Court it must be observed that the obligation is not a debt due the United States for the support of the Government in its sovereign capacity. It is a claim arising from a purely business transaction where the deceased borrowed money from the "Governor of the Farm Credit Administration" and gave in return therefore his seven promissory notes (See Transcript of Record pages 5, 6, 7, and 8) promising to pay, not to the United States Government, but to the "Governor of the Farm Credit Administration, or order." There is no statement in any of these notes that they are obligations due the United States. They are all promises to pay the "Governor of

the Farm Credit Administration, or order," and each contains the recital, "This is given as evidence of a loan made by the Governor of the Farm Credit Administration." There is no claim that these notes have been sold or asigned to the United States so far as the record discloses. They are the property of the "Governor of the Farm Credit Administration" and therefore do not come under the provisions of Section 3466, R. S.

Considering the facts as they appear in this case under any fair interpretation it would seem clear that this is not a debt due the United States Government. This is an obligation arising out of money loaned to deceased upon a business transaction out of funds appropriated by Congress to a sub-agency of the Government to be re-loaned by such agency upon an interest rate to be paid by the borrower; or in other words, it is money loaned for hire, or for a wage, or for a profit, and for the use of which in this case the deceased agreed to pay interest at 5½% per annum.

The Government during the period of time when these loans were made could and did borrow money on bond issues at a much lower rate of interest than that fixed for the deceased to pay in these notes. We believe it will be conceded that the money loaned by the Governor of the Farm Credit Administration to these farmers was procurred by sale of bonds at a rate of interest much lower than that exacted from these borrowers and which would give the organization a

considerable profit on this transaction of business. This, it would seem, is particularly true when we consider the volume of business transacted by this agency, and for that reason we believe that the holdings in the following cases are particularly important to the issues here. Planter's Bank of Georgia, 9 Wheat. 904; Sloan Shipyard Incorporation, et al, -vs- United States Shipping Board Emergency Fleet Corporation and the United States of America, 258 U. S. 549; 42 S. Ct. 386, 389; 66 L. Ed. 762. United States of America -vs- Guaranty Trust Co. of New York, et al, 280 U. S. 478; 50 S. Ct. 212, 214; 74 L. Ed. 556.

The Farm Credit Administration appears to be an established organization or agency that has been in continual operation since its inception; and we feel that the Court should take judicial notice that it is still actively engaged in the business of loaning money. It cannot be said that this is a necessary governmental function, nor can it be said that there is any crying need for this set-up at this writing for the farmers are generally throughout the United States enjoying the greatest prosperity of our National history.

To hold these claims are debts due the United States and entitled to priority under the provisions of said section 3466 would defeat the very purpose of the enactment, as is well stated in re: United States -vs- Guaranty Trust Co., et al, 280 U. S. 478. Such holding or ruling will have a depressing effect on all other sources of credit to the farmers and will very seriously

embarrass them in their business and farming operations. No business man or loaning agency in the future, knowing the existence of such preference, would advance or loan money to these people to carry on their farming operations. The Governor of the Farm Credit Administration could make a loan to such farmers which might be either prior or subsequent to that of the private loaning agency and such loan by said administration would have priority over that of the private loan and would be entitled to be paid first in full. Could anyone vision private concerns or private businesses advancing money in a business bearing such hazardous risks? To sustain and uphold the contention of the petitioner would be to place a serious handicap upon worthy farmers who in time of distress may need aid and assistance of private enterprise.

Another point that should be given consideration here is, the similarity existing between the Farm Credit Administration and that arising out of the Emergency Fleet Corporation, in re: Sloan Shipyard Incorporated, et al -vs- United States Shipping Board Emergency Fleet Corporation, Supra, in that both were created under powers given to the President by Congress and by him under presidential order, and as we understand both agencies enjoy the perogatives and privileges to sue and be sued, and in that connection it should be further observed that in this case the claim of the petitioner in this proceeding was presented by the Governor of the Farm Credit Administra-

tion and not by the United States; Keifer & Keifer -vs- Reconstruction Finance Corporation, 306 U. S. 381; 59 S. Ct. 516; 83 L. Ed. 784, cited by this Court in Home Owners Loan Corporation, 312 U. S. 81; 61 S. Ct. 485; United States -vs- Maxen, 307 U. S. 200; 59 S. Ct. 811; and Federal Land Bank of St. Louis -vs- Priddy, 295 U. S. 299; 55 S. Ct. 705.

Petitioner in paragraph 3 at pages 12 and 13 of its Brief states, "If the decision below is allowed to stand, it will undoubtedly encourage other state courts to take a hostile view towards R. S. 3466, and to disregard its 'plain command', both with respect to claims arising under Farm Credit Administration statutes and claims arising under other Federal statutes. * * * The Secretary of Agriculture advises that claims of the character herein involved * * * and similar claims for loans * * * arise constantly and in the course of time there will be hundreds of such claims aggregating a large amount of money. The United States Attorney for the District of South Dakota advises that, as a consequence of the decision below, the Courts of South Dakota are refusing to recognize claims based upon loans of the Farm Credit Administration as debts due the United States, and are applying state statutes of limitations to bar prosecution of such claims."

It is Respondent's thought and position relative to these statements; That the decision of the Court should be based upon reason, found in Justice and in

fairness, supported by sound legal principles and carrying with it weight and the highest respect for judicial law and justice. We have never considered that the final decision of the highest Court in this land should be an instrument to be used for the purpose of harassing and prosecuting distressed people, or as a club with which to threaten them.

Further that if the Court should give to this section the interpretation urged by petitioner, then we have come to that place in the history of our government where the government may enter any other business by setting up governmental agencies in competition with all other private business and that all the transactions of such businesses would become those of the United States in its governmental sovereignty and that all claims arising out of such transactions will be obligations due the Federal Government, having priority over all like claims of other creditors.

Other points pertinent to the issues now here before this Court in this appeal and which have not been elaborated upon or urged in this Brief are fully set out and discussed with the supporting authorities in the Opinion of the Supreme Court of South Dakota in the appeal of this case to that tribunal set out in the "Transcript of Record", pages 21-30. Specific reference is here made to that decision and the supporting authorities, and the same is hereby most respectfully referred to the Court for its careful consideration.

We do not feel that it is necessary to reprint the

Opinion or the authorities therein submitted in this Brief.

In closing we would state that it does not appear to us as suggested in petitioner's brief and argued in the Supreme Court of the State of South Dakota, that these loans were a work of the Benevolent Government coming to the aid of the distressed farmers in time of need. It seems that the element of profit is quite definitely apparent therein by exacting a rate of interest of 5½% that continues to run without end.

We cannot conceive that our National Congress ever intended to set up a governmental agency to loan money to a distressed people at a rate of interest evidenced by the notes appearing in the record and claim that such loans should be preferred over all other obligations of the debtor, and including exemptions allowed to him and also allowed to his family in case of his death, as provided by the statutes of the several states for the protection of debtors and their widows and children. Such would appear to be far beyond the intentions of our Congress that enacted this law.

CONCLUSION

For the reasons and upon all of the grounds stated herein we submit that the petition for writ of certiorari should not be granted.

Respectfully submitted,

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October 14, 1946.

APPENDIX

Rule 79 of 1939 of the Supreme Court of the State of South Dakota as set out in Section 33.0751 of the South Dakota Code of 1939.

> Rehearings; petition; answer; service. A petition for the rehearing of a cause heard on appeal may be served and filed within twenty days after the decision. The adverse party may serve and file answer thereto within ten days after service of the petition. The petition shall state briefly the ground upon which a rehearing is asked and the points supposed to have been overlooked or misapprehended by the Court, with proper reference to the particular portion of the printed record and to the authorities relied upon. The petition and answer may be typewritten. An original and five copies thereof shall be filed.
>
> If a rehearing be granted, the Court in its order will prescribe the form and time of service of briefs or provide for oral argument as may seem appropriate to the case. The Clerk of the Court shall notify the attorneys of record by mail of the action of the Court granting or denying a petition for rehearing.

SUPREME COURT OF THE UNITED STATES

No. 417.—October Term, 1946.

United States Department of Agriculture, Emergency Crop and Feed Loans, Petitioner, v. George G. Remund, as Administrator of the Estate of Wilhelm Buttke, Deceased.	On Writ of Certiorari to the Supreme Court of the State of South Dakota.

[March 17, 1947.]

Mr. Justice Murphy delivered the opinion of the Court.

We are faced here with the problem of whether, in a state probate proceeding, a claim asserted by the Farm Credit Administration through certain of its officials for and on behalf of the United States is entitled to priority under § 3466 of the Revised Statutes, 31 U. S. C. § 191.

The Governor of the Farm Credit Administration, pursuant to the Acts of February 23, 1934,[1] and June 19, 1934,[2] extended emergency feed and crop loans totalling $370.00 to Wilhelm Buttke, a South Dakota farmer. Most of these loans remained unpaid. On December 26, 1941, Buttke died intestate, leaving an estate insufficient to pay all of his debts. Respondent was appointed administrator of the estate. On March 2, 1942, an authorized agent of the Governor of the Farm Credit Administration filed in the County Court of Roberts County, South Dakota, a claim against the estate for $523.80, the amount of the unpaid indebtedness plus interest. This claim was made "for and on behalf of the United States of America"

[1] 48 Stat. 354.

[2] 48 Stat. 1021, 1056.

and a priority therefor on behalf of the United States was asserted under § 3466 of the Revised Statutes.

The County Court denied preference to this claim. But it did allow the claim in the amount of $79.53, which represented the pro rata share of a common creditor's claim. This decision was affirmed by the Circuit Court of the Fifth Judicial Circuit of South Dakota and by the Supreme Court of South Dakota. 23 N. W. 2d 281. The latter court felt that the Acts of February 23, 1934, and June 19, 1934, created an exception to § 3466 and that the claimed priority should accordingly be refused on the authority of *United States* v. *Guaranty Trust Co.*, 280 U. S. 478. We granted certiorari because of the important problems thereby raised.

The relevant portion of § 3466 of the Revised Statutes provides that ". . . whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied . . ."

Initially, it is suggested that § 3466 is inapplicable since the claim in issue is not a debt due to the United States. The claim grows out of the seven notes executed by the deceased to "the Governor of the Farm Credit Administration, or order, at Washington, D. C." These notes stated that they were "given as evidence of a loan made by the Governor of the Farm Credit Administration." On the premise that the Farm Credit Administration is an entity separate and distinct from the United States Government, the argument is made that obligations due the Farm Credit Administration fall outside the priority established by § 3466. We cannot agree.

The Farm Credit Administration is plainly one of the many administrative units of the United States Government, established to carry out the functions delegated to it by Congress. It bears none of the features of a gov-

ernment corporation with a legal entity separate from that of the United States, whatever difference that might make as to the application of § 3466. Cf. *Sloan Shipyards Corp.* v. *United States Fleet Corp.*, 258 U. S. 549. It had its inception in 1933 as an independent agency, assuming the functions of the Federal Farm Board and the Federal Farm Loan Board. Executive Order No. 6084. In 1939, it was transferred to the Department of Agriculture and placed under the general supervision and direction of the Secretary of Agriculture. Reorganization Plan No. 1, § 401 (a), 53 Stat. 1429; 4 Fed. Reg. 2730. Its functions, personnel and property were then consolidated in 1942 with those of certain other agencies to form the Food Production Administration of the Department of Agriculture. Executive Order No. 9280, 7 Fed. Reg. 10179. At no time has the Farm Credit Administration been other than an unincorporated agency of the United States Government, administering and lending funds appropriated by Congress out of the United States Treasury and returning the money to the Treasury upon repayment. In short, it is an integral part of the governmental mechanism. And the use of a name other than that of the United States cannot change that fact. *United States* v. *Fontenot*, 33 F. Supp. 629; *In re Wilson*, 23 F. Supp. 236; *Federal Reserve Bank of Dallas* v. *Smylie*, (Tex. Civ. App.) 134 S. W. 2d 838; *Helms* v. *Emergency Crop & Seed Loan Office*, 216 N. C. 581, 5 S. E. 2d 822. See also *North Dakota-Montana Wheat Growers' Ass'n* v. *United States*, 66 F. 2d 573. Hence any debt owed the Farm Credit Administration is a debt owed the United States within the meaning of § 3466.

Moreover, the priority given by § 3466 to a debt due to the United States is unaffected by the fact that a claim based upon that debt is filed in the name of an agency of the United States or an authorized officer of such an

agency. It is enough that there is an obligation owed the United States. Whether the claim is filed in the name of the United States or in the name of an officer or agency is immaterial; in the latter instance, the claim is necessarily filed on behalf of the United States and the legal effect is the same as if it had been filed in that name. Nothing in the language or policy of § 3466 justifies any other conclusion. It follows that the method of filing in this case cannot be questioned. The claim was filed in the name of the Governor of the Farm Credit Administration "for and on behalf of the United States of America"—an explicit recognition of the legal realities involved.

The main contention, however, is that the purpose of the statutes under which the loans were made is inconsistent with § 3466, thereby rendering it inapplicable. The Acts of February 23, 1934, and June 19, 1934, authorized feed and crop loans to farmers in drought and storm-stricken areas of the nation. It is said that the prime purpose of these Acts was to restore the credit of the farmers and that to give effect to § 3466 would impair that credit. Reliance is placed upon *United States* v. *Guaranty Trust Co., supra.* This Court there held that § 3466 was inapplicable to the collection of loans made by the Government to railroad carriers to rehabilitate and maintain their credit status; it was felt that to give priority under such circumstances would defeat the purpose of the legislation by impairing the credit of the railroads. See also *Cook County National Bank* v. *United States*, 107 U. S. 445.

But it is manifest that the purpose of the Acts of February 23, 1934, and June 19, 1934, was to give emergency relief to distressed farmers rather than to restore their credit status. These were but two of a series of

emergency seed and crop loan statutes[3] enacted at various times from 1921 to 1938, a period when farmers were the victims of repeated crop failures and adverse economic conditions. Their credit was often impaired, but their most urgent need was for money to purchase feed and to plant crops; without such money, distress and unemployment might have been their lot. It was to meet that urgent need that Congress passed these statutes.

More specifically, the two Acts under consideration were designed to make loans available to those farmers who were unable to secure credit from the Production Credit Associations, organized pursuant to the Farm Credit Act of 1933.[4] It was recognized that many farmers could not qualify for loans from those Associations. Some method of lending aid and assistance to those who had no credit and no money with which to buy feed for their livestock and seeds for their crops was essential in the absence of a more direct form of Government relief. S. Rep. 148, 73d Cong., 2d Sess.; H. Rep. 521, 73d Cong., 2d Sess. As was said by Representative Kerr, "Let it be remembered that the Government is not seeking to make an investment; this is simply an endeavor to finance the farmers of this country who are utterly unable to finance themselves." 78 Cong. Rec. 1959. See *United States* v. *Thomas*, 107 F. 2d 765, 766; *Person* v. *United States*, 112 F. 2d 1, 2.

We conclude that there is no irreconcilable conflict between giving emergency loans to distressed farmers and giving priority to the collection of these loans pursuant

[3] 41 Stat. 1347; 42 Stat. 467; 43 Stat. 110; 44 Stat. 1245, 1251; 45 Stat. 1306, as amended by 46 Stat. 3; 46 Stat. 78, as amended by 46 Stat. 254; 46 Stat. 1032, as amended by 46 Stat. 1160; 46 Stat. 1276; 47 Stat. 5; 47 Stat. 795; 48 Stat. 354; 48 Stat. 1056; 49 Stat. 28; 50 Stat. 5; 52 Stat. 27.

[4] 48 Stat. 257.

to § 3466. Such priority could in no way impair the aid which the farmers sought through these loans; nor could it embarrass the farmers in their daily operations. Moreover, these loans called for a first lien on crops growing or to be grown, or on livestock. The conditions prevailing in 1934 made this type of security uncertain and there is no indication that Congress meant such a lien to be the sole security to which the Government could look for repayment.

We reiterate what was said in *United States* v. *Emory*, 314 U. S. 423, 433: "Only the plainest inconsistency would warrant our finding an implied exception to the operation of so clear a command as that of § 3466." In this case, as in that, we think such inconsistency is wholly wanting. *United States* v. *Guaranty Trust Co.*, *supra*, is therefore inapposite.

Reversed.

MR. JUSTICE DOUGLAS would affirm the judgment on the authority of *United States* v. *Guaranty Trust Co.*, 280 U. S. 478.